IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1861 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
CHANDUBHAI @ MANUBHAI SOMABHAIVASAVA & 2 - Defendant(s)

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Appearance :
MS LAXMI NAINANI for MR MD PANDYA for Appellant(s) : 1,
MR MTM HAKIM for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/10/2006

ORAL JUDGMENT

1. This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 by the G.S.R.T.C., to challenge

the judgment and award of MACT (Special), Vadodara dated 29th February, 1992, rendered in MACP No. 205 of 1987. By the said judgment and award the Tribunal has directed the appellant to pay compensation of Rs.74,000=00 to respondents no. 1 and 2 - original claimants, for the death of their son, caused in a vehicular accident on 5th March, 1987. The Tribunal has saddled respondent no. 3 and appellant with liability to pay compensation of the aforesaid amount together with 15% interest per annum and also proportionate costs.

2. It is the say of the original claimants that respondent no. 3 at the relevant time was driving bus belonging to the appellant and was coming from Surat to Vadodara. When he approached a place near village Varnama, the deceased boy aged 11 years received fatal injuries, when he was knocked down by the bus driven by respondent no. 3. Respondent no. 1 was immediately informed about the accident. He rushed there and removed the injured to SSG Hospital in a rickshaw. However, on examination, the child was declared dead by the concerned medical officer. Respondents no. 1 and 2 who are the parents of deceased boy, subsequently preferred petition under the provisions of Motor Vehicles Act for obtaining compensation of Rs. 1 lakh. According to them, the

deceased was a bright student and he was also rendering help to the family by doing casual work and was earning Rs.150=00 per month.

3. At the hearing, respondent no. 1 gave evidence and produced certain documentary evidence. Respondent no. 3 also stepped into the witness box and gave evidence. The Tribunal on appreciation of material produced before it, came to the conclusion that respondent no. 3 was negligent while driving the vehicle and as a result of his negligence, the accident occurred and the boy lost his life. The Tribunal also came to the conclusion that since the boy had lived for some time, before he expired, he had suffered pain and shock and, therefore, the parents were entitled to Rs.10,000=00 for pain, shock and suffering. The Tribunal also assessed the loss of dependency benefit by holding that the deceased boy would have paid Rs.300=00 per month, to his parents, had he lived his full life. The Tribunal applied the multiplier of 15 having regard to the age of the deceased and awarded Rs.54,000=00 for loss of dependency benefit. It also awarded Rs.10,000=00 for loss of expectation of life i.e., conventional amount. In all Rs.74,000=00 have been awarded by the Tribunal to respondents no. 1 and 2, together with proportionate costs and interest at the

rate of 15% per annum.

4. I have heard Ms. Laxmi Nainani learned advocate appearing for the appellant. She has mainly advanced three submissions. Firstly, that there is no material on record to show that the bus in question, bearing registration No. GRV 8144 was ever involved in the accident. She has further submitted that the Tribunal erred in awarding Rs.10,000=00 under the head of pain, shock and suffering to respondents no. 1 and 2 and also not deducting two-third from the income of the boy which he was likely to earn, had he not died of the accident. She has lastly submitted that interest of 15% granted by the Tribunal is on higher side and it is required to be reduced. Lastly to substantiate her submissions, she has taken me through the record and proceedings of the case, including the oral evidence.

4.1. From the record of the case, it clearly appears that on 5th March, 1987, around 6:25 p.m., the deceased boy received fatal injuries. As a result of the same, the present proceedings were initiated. The question is whether it is the S.T. Bus bearing registration no. GRV 8144 which caused injuries to the deceased. As stated above, the submission of Ms. Nainani is that there is no

material on record to involve the bus in question. However, on going through the record of the case, and the written statement filed on behalf of the appellant and respondent no. 3 by their learned advocates, dated 22nd December, 1987, it becomes clear that in the written statement, no such plea with regard to non-involvement of the offending vehicle is taken. On the contrary, in para 4 of the written statement, it is stated that the accident did not occur on account of the alleged negligence of respondent no. 3 but it was the deceased, who all of a sudden tried to cross the road and in the process he dashed against the bus driven by respondent no. 3. According to the respondents, the accident occurred only because of the negligence of the deceased and not of respondent no. 3. Thus, it is very clear that the appellant and respondent no. 3 have not denied the factum of accident and the involvement of the offending bus in the accident. Therefore, the submissions of Ms. Nainani cannot be accepted. So far as her second submission is concerned i.e., the Tribunal ought not to have awarded any amount for pain, shock and suffering is concerned, in the evidence of respondent no. 1, it is stated that when he received the information with regard to the accident, he immediately went to the spot and found his son in injured condition. He also tried to

remove him in the hospital. According to the witness, the deceased was alive and he was getting epileptic fits. He has further stated that the boy was talking to him. Thus, when the boy had remained alive even after receiving serious injuries, and had died after some time, it is very natural that he would have suffered tremendous agonies. Even the parents would have suffered agony to see the condition of their son. It is true that the Tribunal has made award of Rs.10,000=00 for pain, shock and suffering of the child, but considering the fact that even the parents who were equally sufferer or perhaps more mental agony, they were entitled to receive at least an amount of Rs.10,000=00 on account of pain, shock and suffering.

5. So far as the loss of dependency benefit is concerned, the Tribunal has assessed it at Rs.300=00 and has applied multiplier of 15. In doing so, the Tribunal has applied multiplier of 15 years, keeping in view the age of boy. The boy was aged 11 years and he was unmarried. According to Ms. Nainani when this is the case, the parents would be entitled to receive one-third of the income and two-third amount would have been diverted by the deceased to his own family because with the passage of time, he would have got married and would

have had his own family to maintain. The Tribunal has held that the monthly income of the deceased could be assessed at Rs.500=00 to Rs.600=00 per month. Therefore, according to Ms. Nainani two-third ought to have been deducted by the Tribunal to determine the loss of dependency benefit. She has also placed reliance on the decision of the Division Bench of this Court rendered in the case of **Somabhai Vajabhai & Anr., v. Babubhai Bhailalbhai & Ors., reported in XXIII (1) G.L.R., at pg.785**.

5.1. The submission of Ms. Nainani is required to be accepted. In the instant case, the boy was aged about 11 years and naturally he was unmarried. In the case of Somabhai Vajabhai & Anr., v. Babubhai Bhailalbhai & Ors., (supra) the Division Bench has held that when the claimants are the parents of the unmarried deceased son, the parents should be awarded one-third of the income of the deceased. In para 19, it has been laid down as under:-

> “19.In the instant case the deceased was aged 20 at the time of his death and he had not married. Amongst the appellants, the appellant Somabhai (father) was aged about 45 and the appellant Dehiben (mother) was aged about 40 at the time of the accident. Out of the net amount of Rs.3900/- available to the deceased as aforesaid, he would have been required to divert

> substantial amount in course of time for meeting the needs of his own family. We say so because we are herein concerned with a person whose estimated bracket of income is not high. Having regard to the aforesaid circumstances, we are of the view that in the instant case, it would not be unreasonable to hold that out of the net amount of Rs.3900/-, two-thirds would have been diverted by the deceased for the maintenance of his own family and one-third for the maintenance of his parents. On that basis, the datum figure for computing the dependency benefit works out to Rs.1300/- per annum. Having regard to the young age of the deceased and the age of the parents and the fairly long period for which the parents could have looked forward to the deceased for pecuniary support, the multiplicand of 16 would appear to be just, reasonable and proper. On that basis, the prospective pecuniary loss to the appellants works out to Rs.20,800=00. The appellants would, therefore, be entitled to an award in the sum of Rs.20,800/- for the loss of dependency benefit."

5.2. In view of the aforesaid decision, the Tribunal appears to have committed error. The Tribunal has determined prospective income of the deceased at Rs.600/- and has deducted one-third, on the ground that the deceased might have spent one-third amount of his income on himself. The Tribunal ought to have deducted two-third from the said amount of income which the deceased would have diverted towards the maintenance of his own family and the parents would have received the benefit of only one-third thereof. Therefore, considering the income of the deceased at Rs.600=00 one-third thereof would be Rs.200=00. It, therefore, clearly appears that the Tribunal has awarded Rs.100=00 per month more on that

count. However, even calculating on that basis, the difference would be of only Rs.18,000=00 and I am not inclined to disturb the finding of the Tribunal, considering the fact that the amount of difference is small. Therefore, the loss of dependency benefit determined by the Tribunal is confirmed, but on different ground.

6. Lastly, the contention of Ms. Nainani that the rate of interest is decided on higher side by the Tribunal, is also required to be accepted. She has in support of her contention relied upon the decision rendered by the Division Bench of Karnataka High Court in the case of **Managing Director, Karnataka Power Corpn., Ltd., v. Geetha & Ors., reported in 1988 ACJ 251**, wherein the Karnataka High Court has laid down as under :-

> “23. These are generalisations from experience of individual cases. But, universality cannot be imparted to individual experience. The matter is, in the ultimate analysis, one of the discretion. Discretion cannot be bound by rules. General words must remain general; discretion must remain as discretion and should not be reduced to the sum total of the individual cases. Earlier instances can only afford a general guidance as to the manner in which, in similar circumstances, that discretion is exercised. To deduce a principle that in all cases, 12 per cent is the rule and the award of a lesser rate an exception is t o over-simplify and reduce to a rule, what is best left untramelled by any rule. Section 110-CC gives a

> general discretion. It is best that it is kept that way."

6.1. In the instant case, the Tribunal has awarded 15% interest. The accident has taken place in the year 1987. It appears that at that time the prevailing rate of interest was 10-12%. Hence, the rate of interest given by the Tribunal is on higher side and it is required to be reduced to 12%.

7. The net result is that the appeal is partly allowed with no order as to costs.

The R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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